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MAT v KAT & Anor (SAT & Anor, parties cited)

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HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO WA-33–160–04 OF 2024
EVROL MARIETTE PETERS J
18 JULY 2025

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Family Law — Divorce — Maintenance — First respondent-wife filed petition for judicial separation while petitioner-husband commenced divorce proceedings — First respondent filed application seeking monthly maintenance of RM3m pending disposal of divorce petition and judicial separation — Whether first respondent established her means and needs — Whether first respondent established means of petitioner — Law Reform (Marriage and Divorce) Act 1976 ss 77 & 78

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The petitioner-husband and the first respondent-wife were married in 1987 and had three children. In 2022, the first respondent filed a petition for judicial separation while the petitioner then commenced divorce proceedings in 2024. Vide the judicial separation petition, the first respondent filed an application for ancillary relief seeking, inter alia, interim wife maintenance but was dismissed. Later, vide the divorce petition, the first respondent filed this application for a second maintenance application. The first respondent sought a monthly maintenance of RM3m pending the disposal of the divorce petition and judicial separation. The first respondent asserted that: (a) she was unable to support herself due to a court order issued in March 2025 ('the March 2025 court order'), which had prohibited her from dealing with any assets acquired before or during the marriage. The order prevented her from liquidating or monetising her assets, leaving her financially incapacitated and entirely reliant on the petitioner for spousal maintenance; (b) having previously enjoyed a life of considerable luxury, a sum of RM3m was necessary to sustain the same standard of living; and (c) the petitioner's overall financial means extended beyond his monthly income as he held significant assets. The first respondent referred to the interim order issued in January which restrained the petitioner from dealing with 50% of any asset registered in his sole name ('the January 2024 court order'). The issues for consideration were: (i) whether the first respondent had established her means and needs; and (ii) whether first respondent had established the means of the petitioner.

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Held, dismissing the application with costs:

(1) The first respondent was gainfully employed throughout the marriage indicating that she was financially independent and capable of

supporting herself without reliance on the petitioner. The March 2025 court order made it clear that the restriction was not absolute. The order specifically stated that the first respondent was restrained from dealing with the listed assets 'until further order of the court'. Accordingly, the first respondent was not without legal recourse as she could apply for leave to deal with those assets. There was no evidence that such an application was ever made, or that any such leave, if sought, was unreasonably refused. Consequently, the first respondent's assertion that the March 2025 court order rendered her incapable of self-support was, therefore, misconceived and legally unsustainable. Moreover, the first respondent had incorporated a new business venture following the parties' separation, providing her with an additional independent source of revenue. The first respondent had sufficient means to maintain her lifestyle without relying on the petitioner. She appeared financially self-sufficient and not in need of spousal support to meet her living expenses (see paras 21 & 25–29).

(2) The first respondent's request for a monthly sum of RM3m was not justified in terms of her needs. It was not only excessive but wholly ludicrous and unreasonable by any objective or legal standard. The first respondent failed to furnish any documentary or corroborative evidence to show that the petitioner had made periodic payments to her throughout the marriage in order to maintain such a lifestyle. More fundamentally, the first respondent had not disclosed her actual needs. She failed to justify why she required a staggering sum of RM3m per month for interim maintenance pending the disposal of these divorce proceedings. Further, her claim was formulated as a form of compensation or restitution for career-related losses rather than traditional maintenance under the law. The concept of spousal maintenance, as set out in ss 77 and 78 of the Law Reform (Marriage and Divorce) Act 1976, was not intended to compensate for loss of employment income or professional entitlements, but to provide for the reasonable needs of a spouse, particularly where a party was unable to support themselves adequately after the breakdown of the marriage. Hence, a claim for maintenance that was disguised as a claim for economic loss or damages, particularly when no nexus had been shown between the alleged losses and the conduct of the petitioner could not be accepted (see paras 30, 48–50, 54, 56 & 62).

(3) The petitioner's total monthly income stood at slightly over RM736,000 and it fell significantly short of the RM3m per month sought by the first respondent. On the face of the income statement alone, the claim for RM3m appeared disproportionate and unsustainable. The January 2024 court order was intended to preserve the status quo and ensure that assets potentially subject to division or maintenance claims were not dissipated during the pendency of proceedings. While the preservation of assets may

suggest the petitioner's substantial wealth, it did not, in itself, establish that he had the liquid means, that was, the cash flow or disposable monthly income, to sustain recurring monthly payments of such an extraordinary amount. Therefore, the first respondent had not sufficiently established that the petitioner had the means to pay the sum claimed, either through income or accessible financial resources, on a monthly basis (see paras 67, 70–71 & 73).

[Bahasa Malaysia summary

Pempetisyen-suami dan responden pertama-isteri telah berkahwin pada tahun 1987 dan mempunyai tiga orang anak. Pada tahun 2022, responden pertama memfailkan petisyen untuk perpisahan kehakiman manakala pempetisyen kemudian memulakan prosiding perceraian pada tahun 2024. Melalui petisyen perpisahan kehakiman, responden pertama memfailkan permohonan untuk relief sampingan memohon, antara lain, nafkah interim isteri tetapi telah ditolak. Kemudian, melalui petisyen perceraian, responden pertama memfailkan permohonan ini untuk permohonan nafkah kedua. Responden pertama menuntut nafkah bulanan sebanyak RM3 juta sementara menunggu pelupusan petisyen perceraian dan perpisahan kehakiman. Responden pertama mendakwa bahawa: (a) beliau tidak dapat menampung dirinya sendiri akibat perintah mahkamah yang dikeluarkan pada Mac 2025 ('perintah mahkamah Mac 2025'), yang telah melarangnya daripada menguruskan sebarang aset yang diperoleh sebelum atau semasa perkahwinan. Perintah tersebut menghalangnya daripada mencairkan atau menjana pendapatan daripada asetnya, menyebabkan beliau hilang upaya kewangan dan bergantung sepenuhnya kepada pempetisyen untuk nafkah isteri; (b) setelah sebelum ini menikmati kehidupan mewah, sejumlah RM3 juta adalah perlu untuk mengekalkan taraf hidup yang sama; dan (c) kemampuan kewangan keseluruhan pempetisyen melebihi pendapatan bulanannya kerana beliau memiliki aset yang besar. Responden pertama merujuk kepada perintah sementara yang dikeluarkan pada Januari yang menghalang pempetisyen daripada menguruskan 50% daripada sebarang aset yang didaftarkan atas namanya sendiri ('perintah mahkamah Januari 2024'). Isu-isu untuk pertimbangan adalah: (i) sama ada responden pertama telah membuktikan kemampuan dan keperluannya; dan (ii) sama ada responden pertama telah membuktikan kemampuan pempetisyen.

Diputuskan, menolak permohonan dengan kos:

(1) Responden pertama bekerja dengan pendapatan lumayan sepanjang perkahwinan, menunjukkan bahawa beliau berdikari dari segi kewangan dan mampu menyara dirinya sendiri tanpa bergantung kepada pempetisyen. Perintah mahkamah Mac 2025 dengan jelas menyatakan bahawa sekatan tersebut tidak bersifat mutlak. Perintah itu secara khusus menyatakan bahawa responden pertama dilarang daripada berurusan

dengan aset yang disenaraikan 'hingga perintah mahkamah seterusnya'. Oleh itu, responden pertama tidak tanpa jalan undang-undang kerana beliau boleh memohon kebenaran untuk berurusan dengan aset tersebut. Tiada keterangan bahawa permohonan sedemikian pernah dibuat, atau bahawa sebarang kebenaran yang dipohon, jika ada, ditolak secara tidak munasabah. Oleh yang demikian, dakwaan responden pertama bahawa perintah mahkamah Mac 2025 menjadikannya tidak mampu menyara diri sendiri adalah salah faham dan tidak berasas dari segi undang-undang. Selain itu, responden pertama telah menubuhkan usaha perniagaan baharu selepas berpisah, yang memberi beliau sumber pendapatan tambahan secara berdikari. Responden pertama mempunyai cukup wang untuk mengekalkan gaya hidupnya tanpa bergantung kepada pempetisyen. Beliau kelihatan cukup berdikari dari segi kewangan dan tidak memerlukan sokongan daripada pasangan untuk menampung perbelanjaan hidupnya (lihat perenggan 21 & 25–29).

(2) Permintaan responden pertama untuk jumlah RM3 juta sebulan tidak berasas dari segi keperluannya. Ia bukan sahaja berlebihan malah adalah perkara yang tidak munasabah berdasarkan piawaian objektif atau undang-undang. Responden pertama gagal mengemukakan sebarang keterangan dokumen atau sokongan untuk menunjukkan bahawa pempetisyen telah membuat pembayaran berkala kepadanya sepanjang perkahwinan bagi mengekalkan gaya hidup tersebut. Lebih penting lagi, responden pertama tidak mendedahkan keperluan sebenar beliau. Beliau gagal membuktikan mengapa beliau memerlukan jumlah yang luar biasa sebanyak RM3 juta sebulan sebagai nafkah interim menunggu penyelesaian kes cerai ini. Tambahan pula, tuntutan beliau disusun sebagai bentuk pampasan atau ganti rugi atas kehilangan kerjaya bukannya nafkah tradisional mengikut undang-undang. Konsep nafkah suami isteri, seperti yang terkandung dalam ss 77 dan 78 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976, tidak bertujuan menggantikan pendapatan pekerjaan atau hak profesional, tetapi untuk memenuhi keperluan munasabah pasangan, terutamanya apabila satu pihak tidak mampu menyara diri mereka dengan secukupnya selepas keruntuhan perkahwinan. Oleh itu, tuntutan nafkah yang disamarkan sebagai tuntutan kerugian ekonomi atau ganti rugi, khususnya apabila tidak dipertunjukkan adanya hubungan antara kerugian yang didakwa dan tindakan pempetisyen, tidak boleh diterima (lihat perenggan 30, 48–50, 54, 56 & 62).

(3) Jumlah pendapatan bulanan pempetisyen adalah sedikit lebih daripada RM736,000 dan jauh gagal memenuhi RM3 juta sebulan yang dituntut oleh responden pertama. Berdasarkan penyata pendapatan sahaja, tuntutan RM3 juta kelihatan tidak seimbang dan tidak dapat dipertahankan. Perintah mahkamah Januari 2024 bertujuan untuk menjaga status quo dan memastikan aset yang berpotensi untuk

dibahagikan atau dituntut sebagai nafkah tidak hilang semasa prosiding berlangsung. Walaupun pemeliharaan aset mungkin menunjukkan kekayaan pempetisyen yang besar, ia tidak secara sendiri dapat membuktikan bahawa beliau mempunyai sumber wang tunai, aliran tunai, atau pendapatan bulanan yang boleh digunakan untuk menyokong pembayaran berkala yang tinggi tersebut. Oleh itu, responden pertama tidak cukup membuktikan bahawa pempetisyen mempunyai kemampuan untuk membayar jumlah yang dituntut, sama ada melalui pendapatan atau sumber kewangan yang boleh diakses, secara bulanan (lihat perenggan 67, 70–71 & 73).]

Cases referred to

Ananda Dharmalingam v Chantella Honeybee Sargon [2006] 6 MLJ 179, HC (refd)
ATE v ATD and another appeal [2016] SCD 8; [2016] SGCA 2, CA (refd)
Borthwick (deceased), Re; Borthwick and another v Beauvais and others [1949] 1 All ER 472; [1949] 1 Ch 395, Ch D (refd)
Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo [2002] 2 MLJ 97; [2002] 1 CLJ 721, CA (refd)
Foo Ah Yan v Chiam Heng Chow [2012] SCD 50; [2012] 2 SLR 506, CA (refd)
Gan Koo Kea v Gan Shiow Lih (F) [2003] 4 MLJ 770; [2003] 4 CLJ 539; [2003] 6 AMR 459, HC (refd)
Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863, CA (folld)
Shameni Pillai a/p PB Rajedran v S Arulselvam a/l Sanggilly and Rafidah bt Mat Taib (responden bersama) [2010] MLJU 1333; [2011] 6 CLJ 782, HC (refd)
Sivajothi a/p K Suppiah v Kunathasan a/l Chelliah [2000] 6 MLJ 48, HC (folld)
Tay Bok Choon v Tahansan Sdn Bhd [1987] 1 MLJ 433; [1987] CLJ Rep 24; [1987] MLRA 68, PC (refd)
V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie [1999] 5 CLJ 474, HC (refd)
VPU v VPT [2021] SCD 204; [2021] SGHCF 11, HC (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 77, 77(1), 78

Chris Chin Shang Yoon (with Tan Han Rui) (Shang & Co) for the petitioner.
Kong Yat Sen Fredric (with Avinash Kamalanathan and Jessica Leong) (Bin & Assoc) for the first respondent.

Evrol Mariette Peters J:

INTRODUCTION

[1] This was an application ('this application') by the first respondent-wife in encl 47 seeking a monthly maintenance of RM3m with a yearly increment of

A 5%pa pending the disposal of the divorce petition and judicial separation.

[2] To safeguard the privacy of all parties involved and in view of the sensitive issues at hand, the petitioner-husband and first respondent-wife have been anonymised in this judgment as MAT and KAT respectively. The second respondent is referred to as NAT, while the parties cited are anonymised as SAT and HAT.

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THE FACTUAL BACKGROUND

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[3] The petitioner and first respondent (collectively 'the parties'), aged 64 and 63 respectively at the time of the hearing of this application, were married in August 1987 and had three children born respectively in 1987, 1991, and 1994.

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[4] The petitioner is involved in various business ventures in Malaysia, including, but not limited to, overseeing the operations of a group of companies, among which are entities referred to in this judgment as BCS and BHS.

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[5] The petitioner and the first respondent co-founded BCS in 1987, with the first respondent being actively involved in its management until 2018. The first respondent continues to hold a stake in BHS.

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[6] The marriage ultimately failed to withstand the passage of time and broke down under the weight of mutual accusations, including allegations of adultery. In the midst of these tensions, the first respondent filed a petition for judicial separation in April 2022 ('the judicial separation petition'), while the petitioner later commenced divorce proceedings in April 2024 ('the divorce petition').

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[7] Several interlocutory applications and applications for ancillary relief were filed by both parties.

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[8] In June 2023, vide the judicial separation petition, the first respondent filed an application for ancillary relief in encl 68 seeking, inter alia, interim wife maintenance ('the first maintenance application'). The first maintenance application was dismissed in January 2024.

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[9] In September 2024, vide the divorce petition, the first respondent filed a second maintenance application ('this application').

THE ISSUES

[10] The only issue for consideration in this application was whether the first respondent was justified in seeking a monthly maintenance of RM3m. In addressing such issue, the court had to address the means and needs of the first respondent as well as the petitioner.

[11] The petitioner had also raised numerous preliminary objections.

[12] After careful deliberation, I dismissed all the preliminary objections as they were frivolous and a complete waste of judicial time as it had no bearing on this application. However, this application was also dismissed with costs, for the reasons outlined below.

CONTENTIONS, EVALUATION, AND FINDINGS

Whether first respondent had established her means and needs

[13] In determining if interim spousal maintenance should be granted to the first respondent, reference was made to s 77(1) of the Law Reform (Marriage and Divorce) Act 1976 ('the Law Reform (Marriage and Divorce) Act'), which reads:

> Section 77 — *Power of court to order maintenance of spouse*
>
> (1) The court may order a man to pay maintenance to his wife or former wife:
>
> (a) *during the course of any matrimonial proceedings*;
>
> (b) when granting or subsequent to the grant of a decree of divorce or judicial separation;
>
> (c) if, after a decree declaring her presumed to be dead, she is found to be alive. (Emphasis added.)

[14] Two key considerations in determining the first respondent's entitlement to interim spousal maintenance were the financial means and needs of both parties, and the degree of responsibility each bore for the breakdown of the marriage, in accordance with s 78 of the Law Reform (Marriage and Divorce) Act, which provides:

> Section 78 — *Assessment of maintenance*
>
> In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the *means and needs* of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the *degree of responsibility* which the court apportions to each party for the breakdown of the marriage. (Emphasis added.)

[15] The application of s 78 of the Law Reform (Marriage and Divorce) Act was seen in numerous cases including *Shameni Pillai a/p PB Rajedran v S Arulselvam a/l Sanggilly and Rafidah bt Mat Taib (responden bersama)* [2010] MLJU 1333; [2011] 6 CLJ 782, and *V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie* [1999] 5 CLJ 474.

[16] In the present case, both the petitioner and the first respondent had made numerous and serious allegations against one another, ranging from financial misconduct to emotional and behavioural grievances. These allegations remain hotly contested and unresolved at this stage. Given the adversarial nature of the claims, it would not be appropriate or just for this court to make any findings or draw conclusions regarding fault or responsibility for the breakdown of the marriage within the context of this interim application. Such determinations should be made only after a full and proper ventilation of the evidence at the substantive hearing of the divorce petition and judicial separation, where both parties will have the opportunity to present their case comprehensively.

[17] Accordingly, in this application, being an interim one, the court confined its assessment strictly to the 'means and needs' of the parties in determining any interim financial relief. It must be underscored that interim proceedings serve a specific and limited function, that is, to provide temporary and practical arrangements pending the final resolution of the matrimonial dispute. They are not the forum for assigning blame or resolving complex factual disputes. The court's role at this juncture was, therefore, not to adjudicate on marital fault, but to ensure that immediate needs are met in a fair and equitable manner.

[18] I drew guidance from the case of *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863, where it was stated by Hashim Yusoff JCA, speaking for the Court of Appeal, in the following passages:

> What is needed to be decided now is the amount of maintenance to be awarded to the wife. It is an established principle that in deciding what amount of maintenance the husband should pay the wife, *the court must take into consideration the means and needs of the parties. In assessing the means and needs of the parties the court has always had regard to the duration of the marriage, whether there were any children of the marriage, the age of the parties, whether the husband had financially supported the wife during the duration of their marriage, the parties earning capabilities and whether the divorce would have affected the husband's position financially.*
>
> ...
>
> We are of the view that with the standard and cost of living of the respondent, the sum awarded is justifiable. We are in agreement with the learned counsel for the

respondent that the respondent is to be placed in a position to enjoy the same standard of living as she had during the existence of the marriage. (Emphasis added.)

[19] In the assessment of the 'means and needs' of the parties, the law adopts a conjunctive approach by requiring both elements, 'means and needs', to be evaluated in tandem. This ensures that the assessment of spousal maintenance is not conducted in isolation, but is instead a holistic exercise that considers the financial realities and obligations of both parties. The 'means and needs' test is, therefore, inherently balanced, in that, it seeks to ensure that a party who has the financial ability to support the other does so, but only where the other party has a legitimate financial need that cannot reasonably be met independently.

[20] In interpreting the term 'means' under s 78 of the Law Reform (Marriage and Divorce) Act, it is well settled that the concept extends far beyond mere earned income. It includes passive income, such as rental proceeds, dividends, and interest, as well as the value of assets owned, including cash savings, investments, real estate, and vehicles. 'Means' also encompasses earning capacity, which refers to the potential a person has to generate income based on their educational background, work experience, professional skills, and opportunities available in the market. Other financial resources, whether tangible or liquid, are also considered as part of one's means.

[21] Applying this framework to the present case, it was not in dispute that the first respondent was gainfully employed throughout the marriage. She maintained a steady and reliable income stream, and consistently demonstrated a strong earning capacity. This clearly indicated that she was financially independent and capable of supporting herself without reliance on the petitioner.

[22] In addition to her employment income, the evidence showed that the first respondent possessed considerable financial resources. It was undeniable that she had substantial cash savings and enjoyed multiple streams of passive income, including rental income from various properties and significant returns from investment portfolios. Particularly telling was the fact that she owned several immovable properties, both within Malaysia and abroad. Among these were valuable properties located in the United States, which significantly bolstered her financial position and confirmed her ability to sustain a comfortable standard of living on her own.

[23] The first respondent claimed she was unable to support herself due to a court order issued in March 2025 ('the March 2025 court order'), which, she said, had prohibited her from dealing with any assets acquired before or during the marriage. She maintained that this prohibitory order, granted pursuant to

A the petitioner's application under encl 56, prevented her from liquidating or monetising her assets, thereby leaving her financially incapacitated and entirely reliant on the petitioner for spousal maintenance.

B **[24]** I found this contention to be without merit for several reasons.

[25] A close examination of the March 2025 court order made it clear that the restriction was not absolute. The order specifically stated that the first respondent was restrained from dealing with the listed assets 'until further C order of the court'. This phrase was both significant and decisive as it plainly indicated that the court retained the discretion to grant leave or to vary the order if circumstances justified it.

[26] Accordingly, the first respondent was not without legal recourse. Had D she genuinely required access to her frozen assets to cover basic living expenses or legal costs, she could have applied to the court for leave to deal with those assets. There was no evidence before this court that such an application was ever made, or that any such leave, if sought, was unreasonably refused.

E **[27]** Consequently, the first respondent's assertion that the March 2025 court order rendered her incapable of self-support was, therefore, misconceived and legally unsustainable.

F **[28]** Moreover, it subsequently emerged that the first respondent had incorporated a new business venture following the parties' separation. This enterprise had already begun generating income, providing her with an additional independent source of revenue. The establishment and operation of this company not only demonstrated her entrepreneurial capacity and ongoing G earning potential but also reinforced the conclusion that she retained a level of financial stability.

[29] Taken together, these considerations strongly supported the finding that the first respondent had sufficient means to maintain her lifestyle without H relying on the petitioner. On the evidence, she appeared financially self-sufficient and not in need of spousal support to meet her living expenses.

[30] The subsequent issue to be addressed was whether the first respondent's request for a monthly sum of RM3m was justified in terms of her needs. In my I view, it was not, for the following reasons.

[31] A claim of this magnitude must be substantiated by concrete evidence demonstrating actual financial need. However, when weighed against the substantial means available to the first respondent, including her multiple

sources of income, valuable asset holdings, and continued earning capacity, such a claim appears excessive and unmerited. The request, therefore, could not be sustained under the legal and factual matrix presented.

[32] I was mindful that the first respondent, having previously enjoyed a life of considerable luxury as the wife of a billionaire tycoon, sought to justify her claim for monthly maintenance of RM3m by asserting that such a sum was necessary to sustain that same standard of living.

[33] At this juncture, it must be emphasised that the law does not guarantee the preservation of an identical standard of living following divorce or separation. While the courts are tasked with ensuring fairness, this does not translate into a right to permanent replication of a luxurious lifestyle enjoyed during marriage, particularly where the facts no longer justified such continuity. The assessment of maintenance is inherently fact-specific, and outcomes may vary widely depending on the parties' financial circumstances, the duration of the marriage, contributions made during the union, and future earning potential.

[34] At this juncture, it was appropriate to restate the principle that the role of the court is not to preserve opulence for its own sake, but to avoid a sudden or unjustifiable deterioration in the standard of living of the spouse seeking support. This is particularly so where the marriage was long in duration and the dependent spouse had sacrificed career progression or economic independence. The focus is, therefore, on reasonable continuity, not exact replication.

[35] The first respondent, in this case, had demonstrated substantial means and financial independence. She was not left financially vulnerable or deprived of basic comforts. On the contrary, she possessed multiple properties, considerable passive income streams, and a new business enterprise that further enhanced her economic standing. In these circumstances, her claim for an exorbitant amount, premised solely on the lifestyle enjoyed during the marriage, was neither proportionate nor supported by the principles governing spousal maintenance.

[36] I was also mindful of the legal principles enunciated in *Re Borthwick (deceased); Borthwick and another v Beauvais and others* [1949] 1 All ER 472; [1949] 1 Ch 395, a case that has been cited with approval in several Malaysian decisions. The following is the oft-quoted passage by Harman J:

> It is said that maintenance is the only thing you can look at. What does that mean? It does not mean you can only give the dependant just enough to put a little jam on his bread and butter. It has been already held that what is reasonable for one may not be reasonable for another. It must depend on the circumstances of the case. It certainly depends to some extent on the circumstances of the widow, but I think it

A may also depend on the circumstances of the testator, that is to say, whether he died a rich man or not, because a rich man may be supposed to have made better provision for his wife's maintenance than a poor one. *Maintenance does not only mean the food she puts in her mouth it means the clothes on her back, the house in which she lives, and the money which she has to have in her pocket, all of which vary according* B *to the means of the man who leaves a wife behind him. I think that must be so. Maintenance cannot mean only mere subsistence*. (Emphasis added.)

[37] While the facts of *Borthwick* pertain to the administration of an estate, the case is often referenced in the context of assessing financial provision, C particularly for its emphasis on reasonableness and the just allocation of resources. The case serves as a reminder that claims must be assessed not on the subjective desires of the claimant, but on objective indicators of need, fairness, and available means.

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[38] In sum, while the first respondent was entitled to a fair and dignified standard of living post-separation, the law does not entitle her to maintain a billionaire lifestyle at the petitioner's expense, particularly where she was more than capable of sustaining a high standard of living through her own substantial means. E

[39] In revisiting *Re Borthwick (deceased); Borthwick and another v Beauvais and others*, it also became necessary to dispel a common misconception stemming from its frequent misapplication. Delivered over 75 years ago, this F landmark decision has often been cited in contexts that stretch beyond its original intent. At its core, the case dealt with the financial entitlement of the testator's wife, particularly in light of dramatic shifts in their marital and financial circumstances.

G **[40]** The couple had initially experienced financial hardship, culminating in the testator's bankruptcy. As a result, his wife returned to live with her parents. Nevertheless, he continued to provide her with a weekly allowance of GBP3. This modest provision remained unchanged even as the testator's financial fortunes improved significantly.

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[41] The legal issue in *Re Borthwick* was not simply the amount of maintenance provided, but whether it remained appropriate in light of the testator's substantially improved financial position. The court ultimately held that the wife's entitlement should be reassessed to reflect these changes, rather I than being limited to the token sum initially given.

[42] *Re Borthwick* highlighted the court's responsibility to ensure fairness in post-marital financial arrangements, especially when there are major changes in one party's financial capacity. It underscores the judiciary's role in adapting

legal outcomes to evolving economic realities, rather than rigidly upholding outdated arrangements.

[43] While *Re Borthwick* continues to be cited, greater practical insight can be found in more recent Singaporean decisions such as *Foo Ah Yan v Chiam Heng Chow* [2012] SCD 50; [2012] 2 SLR 506, *ATE v ATD and another appeal* [2016] SCD 8; [2016] SGCA 2, and VPU v VPT [2021] SCD 204; [2021] SGHCF 11. These cases provide a more modern and realistic approach to spousal maintenance after separation, particularly regarding the financial entitlements of the wife.

[44] Central to these rulings is the principle of financial preservation, which seeks to maintain, as far as reasonably possible, the standard of living enjoyed during the marriage. However, the principle of financial preservation must be applied with flexibility. The Singapore courts have promoted a 'common-sense holistic approach', recognising the inevitable financial adjustments required post-separation or divorce.

[45] The Singapore approach acknowledges a fundamental truth: after separation, both parties must face a new financial reality. The income and resources that once supported one household must now sustain two, making it impractical to expect the same standard of living to continue uninterrupted.

[46] While it was important to minimise the decline in the first respondent's standard of living, expecting to replicate the exact marital lifestyle is neither realistic nor supported by law. These cases collectively demonstrate the courts' efforts to balance fairness with pragmatism, recognising the economic consequences of divorce while encouraging both parties to adjust to a new, shared financial reality.

[47] Hence, upon conducting a thorough review of the first respondent's submitted list of expenses, I observed several critical issues that undermined the credibility and legitimacy of her claim.

[48] First, the sum of RM3m per month sought by the first respondent was not only excessive but wholly ludicrous and unreasonable by any objective or legal standard. The figure bore no proportionality to any demonstrated or established pattern of expenditure during the course of the marriage. It appeared to be an arbitrary amount, unaccompanied by a realistic breakdown of actual living costs or legitimate monthly needs.

[49] Secondly, the first respondent failed to furnish any documentary or corroborative evidence to show that the petitioner had made periodic payments to her throughout the marriage in order to maintain such a lifestyle.

While she claimed to have been accustomed to a certain standard of living during the marriage, no records, such as bank statements, remittance advices, or affidavits of consistent financial transfers, were submitted to substantiate these assertions. In the absence of such proof, the court is unable to reasonably infer that such a standard was consistently maintained with the petitioner's support.

[50] Thirdly, and more fundamentally, the first respondent had not disclosed her actual needs. She failed to justify why she required a staggering sum of RM3m per month for interim maintenance pending the disposal of these divorce proceedings. It is trite law that any claim for maintenance must be based on evidenced need, and yet the first respondent neglected to submit any documentation, such as receipts, invoices, bills, or an itemised breakdown of her current monthly expenses, to assist this court in evaluating her claim. Her failure to provide such basic evidence amounts to a dereliction of her duty to assist the court in determining what was fair and reasonable in the circumstances. The claim, as it stands, was entirely unsubstantiated.

[51] In this regard, reference was made to the case of *Ananda Dharmalingam v Chantella Honeybee Sargon* [2006] 6 MLJ 179, where Faiza Thamby Chik J laid down an important principle relevant to the present issue. His Lordship emphasised that the burden lies squarely on the applicant to demonstrate that the sum she sought was genuinely required to meet her needs. In his words:

> Having dealt with the above facts, I will reiterate the two separate tests set out in the LRA (one for the wife and another for the children) that must be considered in considering maintenance for the wife and children herein. By virtue of s 78 of the LRA set out aforesaid, the only test that this court needs to adopt in deciding if (interim) maintenance should be awarded to the wife in these proceedings is the means and needs of the parties. The wife in the application herein contends that she needs RM6,800 in maintenance. *However, the wife has not satisfied or discharged her duty to evidence that she does indeed need this sum of money*. Indeed, the breakdown put forward by the wife at para 8 of her affidavit affirmed on 21 June 2004 does not add up to the amount of RM6,800. *Further, the matters detailed in the said breakdown have not been evidenced by any receipts or bills or any form of documentation or other evidence whatsoever*. It is therefore my finding that the wife has not adequately and/or properly evidenced her needs and that the figure of RM6,800 claimed by the wife in the application herein is an excessive and unjustified amount. the husband in this case had been working in government service until recently. He left government practice at the end of last year. He only began working as a doctor in private practice from March 2004. In the circumstances, this is a husband who had only just started out in his career in private practice. (Emphasis added.)

[52] The principle established in the above case remains directly relevant to the present matter, as the first respondent has not discharged the burden of proving her financial needs. In the absence of supporting documentation and

given the excessive nature of the claim, the court was unable to grant the amount sought for interim wife maintenance. Any maintenance awarded must be based on reasonable, substantiated, and proportionate need, and not on conjecture or inflated demands.

[53] It was also undisputed that the first respondent's claim for spousal maintenance in the sum of RM3m per month was not based on her actual living expenses, but rather on her alleged loss of income, bonuses, allowances, and Employees Provident Fund ('EPF') contributions. She contended that these losses resulted from the petitioner's conduct, alleging that he had caused or directed the companies employing her to cease salary payments from April 2024 onwards.

[54] In other words, her claim was formulated as a form of compensation or restitution for career-related losses rather than traditional maintenance under the law.

[55] In my view, this contention is legally untenable for several reasons.

[56] Firstly, the concept of spousal maintenance, as set out in ss 77 and 78 of the Law Reform (Marriage and Divorce) Act, is not intended to compensate for loss of employment income or professional entitlements, but to provide for the reasonable needs of a spouse, particularly where a party is unable to support themselves adequately after the breakdown of the marriage.

[57] In this regard, I drew guidance from the decision of *Sivajothi a/p K Suppiah v Kunathasan a/l Chelliah* [2000] 6 MLJ 48, where His Lordship explained the proper construction of the term 'maintenance' under the Law Reform (Marriage and Divorce) Act. His Lordship stated that maintenance refers to financial support necessary for the sustenance and upkeep of a former spouse, taking into account factors such as the spouse's needs, income, earning capacity, and standard of living during the marriage, and not to replace lost wages, bonuses, or retirement savings:

> The word 'maintenance' is a term of very wide scope. *It signifies any form of material provision that will enable an adult to live a normal life* and a child to be brought up properly. (Emphasis added.)

[58] In the present case, although the first respondent's claim for RM3m per month was not linked to her actual living needs, she had failed to provide any credible or admissible evidence to support her assertion that the alleged loss of income, bonus, allowance, and EPF contributions was directly attributable to the actions of the petitioner. There were no employment records, communications, affidavits, or other forms of evidence demonstrating that the

petitioner had interfered with her employment or caused the loss in question. Her claim remained speculative and unsubstantiated.

[59] In any event, the allegations were unsubstantiated and were disputed by the petitioner through his affidavits. It was crucial to underscore that affidavit evidence, given its inherently conflicting nature, cannot serve as the sole basis for determining the truth of the claims without the opportunity for cross-examination of the individuals who provided the affidavits. This principle was well illustrated in *Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo* [2002] 2 MLJ 97; [2002] 1 CLJ 721, where Siti Norma Yaakob JCA (as she then was) explained:

> Faced with such conflicting affidavit evidence, what the trial judge should have done was to sieve through such evidence, consider only those that are undisputed or uncontroverted, and balance these with the consideration of what would work towards the betterment and interests of the four children.

[60] Further reference was made to *Gan Koo Kea v Gan Shiow Lih (F)* [2003] 4 MLJ 770; [2003] 4 CLJ 539; [2003] 6 AMR 459, where it was emphasised that in cases of conflicting accounts not subjected to the scrutiny of cross-examination and re-examination during a full trial with viva voce evidence, the court was obliged to disregard disputed facts. Instead, decisions must be based solely on undisputed facts.

[61] This principle of civil litigation was succinctly articulated by Lord Templeman for the Privy Council in *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 MLJ 433; [1987] CLJ Rep 24; [1987] MLRA 68:

> At the end of the day, the judge must decide the petition on the evidence before him. If allegations are made in affidavits by the petitioner and those allegations are credibly denied by the respondent's affidavits, then in the absence of oral evidence or cross-examination, the judge must ignore the disputed allegations. The judge must then decide the fate of the petition by consideration of the undisputed facts.

[62] Hence, in the absence of such evidence, this court could not accept a claim for maintenance that was disguised as a claim for economic loss or damages, particularly when no nexus has been shown between the alleged losses and the conduct of the petitioner. The first respondent bore the burden of proving not only her needs but also the factual basis for any alleged interference with her income. That burden was not discharged.

[63] In any event, even if the first respondent's loss of income were taken into consideration, the court must ultimately assess her claim in light of her overall means and reasonable needs. As previously addressed, she retained substantial

assets and resources, which were more than sufficient to sustain her standard of living. Therefore, her loss of employment alone did not justify an award of spousal maintenance.

[64] For these reasons, the claim for RM3m per month was untenable, both legally and factually. It bore no relation to the principles governing interim maintenance and was wholly unsupported by evidence. The sum claimed was excessive by any standard, and maintenance must be grounded in reasonable financial need, and not determined by arbitrary or exaggerated demands driven by personal preference.

Whether first respondent had established the means of the petitioner

[65] Another key issue in these proceedings was whether the first respondent had discharged the burden of proving that the petitioner had the financial means to pay her the sum of RM3m per month as spousal maintenance. Under the law, the court must consider not only the needs of the applicant but also the ability of the paying party to meet those needs without causing undue hardship to themselves.

[66] In this regard, the onus lay squarely on the applicant, in this case, the first respondent, to establish that the petitioner possessed sufficient income or assets to comply with the maintenance sought. This was in accordance with the principles outlined in ss 77 and 78 of the Law Reform (Marriage and Divorce) Act, which required the court to assess the means and needs of both parties when determining the quantum of maintenance.

[67] Based on the financial documents tendered by the petitioner, it was revealed that his total monthly income stood at slightly over RM736,000. This figure was substantial by any measure and undeniably indicative of high earning capacity. However, it fell significantly short of the RM3m per month sought by the first respondent. Even if the petitioner were to commit the entirety of his monthly income toward maintenance, it would still be insufficient to meet the claimed amount. Thus, on the face of the income statement alone, the claim for RM3m appeared disproportionate and unsustainable**.**

[68] That said, the first respondent sought to argue that the petitioner's overall financial means extended beyond his monthly income**,** relying on the fact that he holds significant assets. In support of this, reference was made to the interim order issued in January ('the January 2024 court order'), which restrained the petitioner from dealing with 50% of any asset registered in his sole name.

A **[69]** I had to disagree with the first respondent for the following reasons.

[70] The January 2024 court order was intended to preserve the status quo and ensure that assets potentially subject to division or maintenance claims were not dissipated during the pendency of proceedings.

B

[71] However, while the preservation of assets may suggest the petitioner's substantial wealth, it did not, in itself, establish that he had the liquid means, that is, the cash flow or disposable monthly income, to sustain recurring monthly payments of such an extraordinary amount. The distinction between capital wealth and monthly liquidity was crucial. Maintenance obligations are ordinarily assessed with reference to the paying party's regular income stream, not merely the existence of capital assets, unless those assets are being liquidated or generate income.

C

D

[72] Accordingly, although the petitioner's financial position may be one of overall affluence, the first respondent had not convincingly shown that he had the immediate or ongoing capacity to pay RM3m each month without exhausting assets or compromising other financial obligations. The amount claimed appeared to be more aligned with a capital settlement or asset division, rather than monthly spousal maintenance.

E

[73] For these reasons, I found that the first respondent had not sufficiently established that the petitioner had the means to pay the sum claimed, either through income or accessible financial resources, on a monthly basis. Any maintenance order must be grounded in realistic assessment of means and needs, not on speculative assumptions about wealth or punitive expectations divorced from financial reality.

F

G

[74] In the present case, the first respondent appeared to be testing the waters to see how much she could extract from the court, a tactic that comes across as disingenuous and lacking in good faith. As such, I was compelled to remind all parties that divorce or separation is neither a lottery windfall nor a revenue-generating exercise. It is a legal process to address the breakdown of a marital relationship, not a means for personal enrichment

H

CONCLUSION

I **[75]** In conclusion, and following a thorough examination and prudent evaluation of the submissions by counsel for both parties, and the evidence adduced, this application was dismissed with costs.

Application dismissed with costs.

Reported by Nabilah Syahida Abdullah Salleh